THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 16544 of 1996

DATE: 28-02-2007

Between :

B.Latha and 17 others.

… Petitioners

And

Collector and District Magistrate,
Hyderabad District and 2 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 16544 of 1996

ORDER:

The petitioners, 18 in number, claim to be the landless poor. It is stated that they were granted house site pattas to an extent of 40 square yards in Sy.No.46/1 situated at Lalaguda, Secunderabad on 14-08-1988 and possession was delivered to them on the same day. All the petitioners have paid Rs.361/- each towards the share of the beneficiaries and the Deputy Executive Engineer, Housing Cell, Collectorate, Hyderabad has forwarded the record to HUDCO for grant of permission for construction of pucca houses (1+2). Pending construction of such pucca houses, the petitioners raised temporary structures and have been staying therein. While so, the second respondent-Revenue Divisional Officer vide notice dated 29-05-1995 called upon the petitioners to show cause as to why the certificates issued in their favour should not be cancelled on the ground that they failed to utilize the land for housing purpose within three years. It was also alleged that the pattadars were not physically found available on the spot. Immediately, the petitioners submitted their representations explaining the facts and requesting to drop all further proceedings. Though the second respondent has not passed any final order as such, the first respondent-Collector and District Magistrate by proceedings dated 13-03-1996 purportedly passed under Section 166-B of the Andhra Pradesh (Telanga Area) Land Revenue Act, 1317 fasli (for short 'the Act') cancelled the house site pattas sanctioned to 99 beneficiaries including the petitioners herein and instructed the second respondent to issue pattas to 104 beneficiaries afresh.

Aggrieved by the said action of the respondents, this writ petition is filed seeking a declaration that the proceedings of the first respondent dated 13-03-1996 are arbitrary and illegal.

It is contended by the petitioners that the impugned order of the first respondent was not even communicated to them and at any rate, the impugned order which was passed at the instance of local MLA, being politically motivated is arbitrary and illegal. It is also contended that the allegations in the impugned order that the whereabouts of the assignees are not known and they are benami assignees were absolutely false and without any basis.

A counter affidavit has been filed on behalf of the respondents denying the allegations made and stating that on enquiry conducted by the Mandal Revenue Officer, Secunderabad under whose jurisdiction the land in question falls, it was found that only 29 beneficiaries were physically residing in the land and whereabouts of the remaining persons were not known. Accordingly, individual notices were served calling upon them to show cause as to why their pattas should not be cancelled. Some of the beneficiaries submitted replies objecting the proposed cancellation and the said replies were examined and a detailed report was sent by the Revenue Divisional Officer to the Collector vide proceedings dated 22-09-1995 recommending for cancellation of house site pattas. Accordingly, the first respondent took up the enquiry under Section 166-B of the Act and passed the impugned proceedings canceling the pattas in favour of the petitioners. Subsequently, in the year 2004 as many as 82 new beneficiaries were given possession certificates as per the actual possession. Since the petitioners have never been in possession of the disputed land, the writ petition is misconceived and liable to be dismissed.

I have heard the learned counsel for the both the parties and perused the material on record.

The counter affidavit filed on behalf of the respondents dated 12-06-2006 shows that the land in question was encroached by 82

persons in whose favour new pattas were granted in the year 2004. It is also clear that the said 82 persons have been continuing in possession and enjoyment of the land in question as on today. May be that patta certificates were granted in favour of the petitioners herein in the year 1992, but nothing has been placed before this Court to show that they are continuing in possession as on the date of the filing of the writ petition much less as on today. As a matter of fact, the specific case of the respondents is that all the assignees including the petitioners were benami and they never occupied the land in question.

As could be seen, there is absolutely no material to establish the version of the petitioners that they are continuing in possession and enjoyment of the land in question. On the other hand, the case of the respondents is that the petitioners were never in possession and therefore, the assignments were cancelled in the year 1996 and thereafter, fresh pattas have been granted in favour of 82 persons, who are continuing in possession as on today.

Since the matter involve several disputed questions of fact, which cannot be enquired into and decided by this Court in a writ proceeding and moreover in the absence of the fresh assignees in whose favour pattas have been granted in the year 2004, the writ of *Mandamus* as prayed for cannot be granted. In case, the petitioners are still aggrieved, it is open to them to work out the appropriate remedy as available under law.

With the above observation, the writ petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 28-02-2007

KLP